

Date, Time, and Place of Motion:

May 21, 2014
9:15 o'clock a.m.
U.S. Bankruptcy Court
James T. Foley US
Courthouse, Broadway
Albany, NY 12201
Room 306

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re:

AFFIDAVIT

MOHEB HABIB,

Case No. 14-10209

Debtor

Marc S. Ehrlich, Esq., being duly sworn, deposes and says:

1. I am the Chapter 7 Trustee in the above-encaptioned bankruptcy case and am making this affidavit in support of my motion as Trustee an Order directing debtor to turnover to the Trustee debtor's one-half interest in his 2013 Internal Revenue Service income tax refund in the amount of \$5,211.00 and debtor's 2013 New York State income tax refund in the amount of \$1,019.50.
2. The source of my knowledge for this affidavit is review of the debtor's Chapter 7 petition and schedules, a review of debtor's 2013 Internal Revenue Service and New York State income tax returns, as well as debtor's testimony at the section 341 examination.

BACKGROUND

3. Debtor filed a Chapter 7 petition on January 31, 2014. Debtor appeared for examination on March 10, 2014.
4. Among the assets owned by the debtor as of the date of filing is debtor's right to his one half interest in his 2013 Internal Revenue Service income tax refund in the

amount of \$5,211.00 and debtor's 2013 New York State income tax refund in the amount of \$1,019.50.

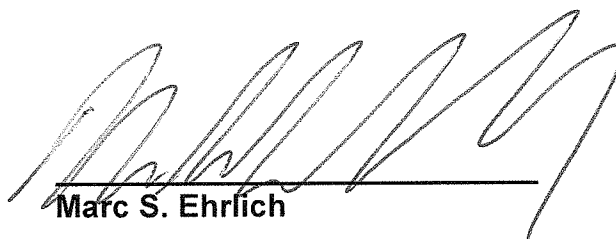
5. Debtor filed his 2013 tax returns jointly with his wife, Margarite H. Habib, a non-debtor.
6. The total amount of the tax refunds to be received are \$10,422.00 from the Internal Revenue Service and \$2,039.00 from New York State Department of Taxation & Finance. Since the tax returns were filed jointly and only one person filed a bankruptcy petition, the Trustee is entitled to administer one-half ($\frac{1}{2}$) of the tax refunds received, which is \$5,211.00 from the Internal Revenue Service refund and \$1,019.50 from the New York State Department of Taxation & Finance refund.
7. The tax refund money at issue is not exempt. Debtor claimed New York exemptions and claimed a homestead exemption against his residence. If a debtor claiming New York exemptions claims a homestead exemption, that debtor is not entitled to claim an exemption for cash in the form of an income tax refund receivable. See New York Debtor Creditor Law sections 282 and 283.
8. Debtor listed in his petition \$94,274.81 in unsecured non-priority claims.

RELIEF SOUGHT

9. I am seeking the entry of an Order requiring debtor to turn over to the Trustee her one-half interest in his 2013 Internal Revenue Service income tax refund in the amount of \$5,211.00 and debtor's 2013 New York State income tax refund in the amount of \$1,019.50.
10. I am further requesting that the Order require debtor to turn over said sum within ten (10) days of the entry of a turnover order.

11. No previous application has been made for this relief.

WHEREFORE, the Trustee requests an Order directing debtor to turnover to the Trustee debtor's one-half interest in his 2013 Internal Revenue Service income tax refund in the amount of \$5,211.00 and debtor's 2013 New York State income tax refund in the amount of \$1,019.50, with said turn over to occur within ten (10) days of the entry of a turnover order, pursuant to 11 U.S.C. section 542.



Marc S. Ehrlich

Sworn to before me the 21st day of April, 2014



Notary Public
My Commission Expires 12/31/14

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In Re:

Chapter 7

MOHEB HABIB

Case No. 14-10209

Debtor,

Affidavit of Service

STATE OF NEW YORK)

) SS.:

COUNTY OF RENSSELAER)

Judith Fisher, being duly sworn, deposes and says: that she is over the age of 18 years; that she served one copy of the Notice of Motion and Affidavit on the parties listed below on April 22, 2014, by regular mail. (Notated to be served via ecf-pacer)

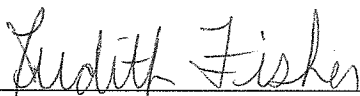
To:

Hon. Robert E. Littlefield, Jr. (pacer)
U.S. Bankruptcy Court Judge
445 Broadway
Albany, NY 12207

Office of the U.S. Trustee (pacer)
74 Chapel Street
Albany, NY 12207


Richard H. Weiskopf, Esq. (pacer)
Attorney for Debtor
Barbaruolo & Weiskopf, Esq.
12 Cornell Road
Latham, NY 12110

Moheb Habib
19 Citation Drive
Latham, NY 12110



Judith Fisher

Sworn to before me this
April 22, 2014



Notary Public